AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3289 of 2003

Ms. P. A. Dolly

-Versus-

Managing Director, Bhilai Steel Plant & others

Post for order on 8th February, 2006.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3289 of 2003

Petitioner — Ms. P.A. Dolly, wife of P.R. Sajumon, aged about 29 years, Resident of quarter No. 10-B, Street No. 32, Sector -4, Bhilai Nagar, District – Durg, Chhattisgarh.

Versus

Respondents

1. Managing Director, Bhilai Steel Plant, Steel Authority of India Limited, Bhilai, District- Durg (Chhattisgarh).
2. Director, J.L.N. Hospital and Research Centre Bhilai Steel Plant, Bhilai, District- Durg (Chhattisgarh).
3. Sr. Manager, (P-Medical), Bhilai Steel Plant, Bhilai, Distt. Durg, Chhattisgarh.
4. Ku. Sangeeta Samuel, 274, Street 2 C, New Adarsh Nagar, District – Durg (Chhattisgarh).
5. Smt. Anila Kumar, LIG/77, HUDCO, Bhilai, District- Durg (Chhattisgarh).
6. Ku. Anamika Alpena Das, Quarter No. 1A, Street-9, Sector-8, Bhilai, District-Durg (Chhattisgarh).
7. Ku. Lata Sharma, 473, Sindya Nagar,Durg, District-Durg (Chhattisgarh).
8. Smt. Neena Shaji, Plot No. 81, A Type, Akansha Kunj, Risali, Bhilai, District-Durg (Chhattisgarh)

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Kishore Bhaduri, Advocate with Shri Saurabh Jayaswal, Advocate for the petitioner.

Shri Pritinker Diwakar, Senior Advocate with Shri P. R. Patankar, Advocate for the Respondent No. 1 to 3.

None for the Respondents No. 4 to 8.

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ORDER

(08 February, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The instant petition filed under Article 226/227 of the Constitution of India seeks a direction originally against the respondents to appoint the petitioner as Nursing Sister in the respondents-Hospital. Thereafter by way of amendment dated 11.7.2005 a new prayer i.e. 7.III was added to the effect that the respondents be directed to consider the petitioner's case and to continue with her services as Nursing Sister.

2. That the facts in nutshell are that the petitioner has completed four years Bachelor of Science (Nursing) course in Jawahar Lal Nehru Hospital and Research Center of the Bhilai Steel Plant, at Sector-9, Bhilai (for short 'Hospital'). After completion of the training course, she was awarded a degree of Bachelor of Science (Nursing) from Ravi Shankar University, Raipur. By order dated 6.9.1993 (Annexure P/3), the petitioner was selected for appointment in the Hospital by the Respondent No.3 on purely temporary basis for a maximum period of four years only. The terms of appointment was that services of the petitioner was terminable without any previous notice, if the employee is unfit or is likely for a considerable time to continue unfit or if the employee is found guilty of any insubordination, intemperance or any other misconduct or breach of any rules pertaining to her service or conduct of non performance of her duties.

3. The petitioner was further required to execute a bond for a period of four years w.e.f. 1.8.1996 (Annexure P/4). The petitioner completed four years bond period of her service w.e.f. 1.8.1996 to 31.7.2000 and as such the petitioner was relieved from bond service of Bhilai Steel

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Plant by order dated 3.8.2000 (Annexure P/5) w.e.f. 31.7.2000 (AN). According to the petitioner, the petitioner was given an understanding that the services of the petitioner, who had taken training in the Hospital, would be regularized. The Respondent No.1 by letter dated 16.12.2002 (Annexure P/6) sent a call letter to the petitioner for interview for the purpose of appointment on the post of nursing sister. Along with the petitioner, several others were also sent the same call letter for interview. Her name and that of other eligible candidates were called from the employment exchange. According to the respondents, 64 candidates were called for interview, 63 candidates appeared in the interview, out of which 40 candidates were selected. The minimum qualifying marks in interview was 25. The petitioner could not succeed in the interview as she did not get the minimum qualifying marks i.e. 50% of the total marks i.e. 50.

4. Shri Kishore Bhaduri, learned counsel appearing for the petitioner submitted that the petitioner was required to execute a bond in the prescribed form to serve for four years in hospital or dispensary of the Steel Authority of India Ltd. The petitioner was denied the regular job which is contrary to clause VII 4 of the Prospectus for B.Sc. (Nursing) 1992-93. Clause VII 4 and 5, which reads as under:-

> **"VII Admission for First Time**
>
> *1. xxx xxx xxx*
> *2. xxx xxx xxx*
> *3. xxx xxx xxx*
> *4. The candidate shall execute the bond in prescribed form to serve for 4 years in any hospital or dispensary of Steel Authority of India Ltd. Registered Office, Lodi Road, New Delhi. The last 3 years will be binding only if offered job by SAIL.*
> *5. The selection for Admission to course or execution of Bond does not carry any assurance for employment by Steel Authority of India Ltd. or Bhilai Steel Plant or the college.*
> *6. xxx xxx xxx"*

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5. Learned counsel further submitted that in the letter dated 6.5.2002 (Annexure P/12) issued on the subject "Notification of vacancies for the post of Nursing Sister under Medical Department under Employment Exchange Compulsory Notification of Vacancies Act 1959-60" it was provided that for appointment to the post of Nursing Sister the minimum qualification was B.Sc. in Nursing or equivalent from any recognized Institute, with minimum two years experience in a 500 bedded hospital, and working experience in OTs, ICUs and dialysis unit. It has been mentioned in the 'requisition form for recruitment through employment exchange'. The respondents No. 1 to 3 thereafter relaxed the minimum qualification and experience to extend illegal favour to lesser qualified and lesser experienced persons. It is submitted that in second 'requisition form for recruitment through employment exchange' dated 7.10.2002 (Annexure R/1) wherein 5 posts out of 45 were kept reserved for diploma holders who were matriculate with "A" grade diploma in general nursing (and midwifery for female candidates) and minimum 3 years experience in profession. The experience required for B.Sc. nursing was two years.

6. It is further contended by the petitioner that the petitioner would have been within the merit list had those five posts were not reserved for diploma holders. The list of the successful candidates was prepared and published in the month of January, 2003.

7. Shri Pritinker Diwakar, learned Senior Counsel with Shri P. R. Patankar, learned Counsel appearing for the Respondents No. 1 to 3 submitted, per contra, that the petitioner was considered along with other 62 candidates for appointment on the post of nursing sister. 45 posts were available for appointment. Out of 45 posts, 40 posts were reserved for B.Sc. (Nursing) candidates and 5 posts were reserved for

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diploma holders. By letter dated 7.10.2002 of the Manager (P-Recruitment), names of all the candidates were requisitioned through employment exchange. The experience for B.Sc. course was two years and for diploma holders 3 years. It is for the employer to decide as to how posts of nursing sisters be filled up. The petitioner cannot challenge the policy of the Respondents No. 1, 2 and 3 to the effect that all 45 posts should have been kept reserved for B.Sc. (nursing), depriving the diploma holders, having more experience for appointment on the post of nursing sister. It was further contended that the submission of the petitioner that clause VII 4 of the prospectus of B.Sc. (Nursing) 1992-93 that there was a pre condition to execute a bond for the regularizing the job of the candidates is not correct. Clause VII 5 makes it clear that "The selection for admission to course or execution of Bond does not carry any assurance for employment by the Steel Authority of India Ltd. or Bhilai Steel Pant or the college.".

8. The petitioner has obtained less than qualifying marks i.e. 22.0 out of total marks 50 when other candidates, having obtained more than 25 marks out of 50 up to Srl. No. 42 have been selected for appointment. The merit list of the candidates dated 8.5.2003 is as under:-

Srl. No.	Roll No.	Name of Candidate	Category	Interview Marks
1.	25015	Smt. M. Uma	Genl.	44.0
2.	25017	Smt. Lovely Shibu	Genl.	43.5
3.	25025	Ku. Nandita Choudhary	Genl.	43.0
4.	25019	Smt. Binu Shylu	Genl.	43.0
5.	25024	Smt. Pramila Martin	Genl.	43.0
6.	25012	Ku. Kshama	Genl.	42.5
7.	25022	Smt. Renuka Neelam Nag	Genl.	42.5
8.	25026	Smt. Leena Henry	Genl.	42.5
9.	25010	Smt. Jaishree R	Genl.	42.00

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10.	25009	Smt. Rita Bhatnagar	Genl.	41.5
11.	25011	Smt. Liji Thomas	Genl.	41.5
12.	25014	Smt. Kaushalya Adhikari	Genl.	41.0
13.	25018	Smt. Shabana Qureshi	Genl.	40.5
14.	25013	Smt. Messy Varghese	Genl.	40.5
15.	25027	Miss Pushplatha	Genl.	40.0
16.	25016	Smt. Anjali Dey	Genl.	40.0
17.	25021	Smt.MeenakshiMilka Sona	Genl.	40.0
18.	25023	Rashmi Bala Masih	Genl.	39.5
19.	25020	Smt. Anita Benjamin	Genl.	39.5
20.	25028	Smt. Shobhna Nair	Genl.	39.0
21.	25029	Smt. Nisha Sharma	Genl.	38.5
22.	25030	Miss Sandhya Devi Pandey	Genl.	38.5
23.	25036	Smt. Anitha A. J.	Genl.	38.0
24.	25045	Smt. Sunita Pandey	Genl.	37.5
25.	25044	Ku. Radha	Genl.	37.5
26.	25043	Smt. Rukshana Chelak	Genl.	37.0
27.	25033	Smt. Kavita Raj	Genl.	36.5
28.	25041	Smt. Grettle B. Paul	Genl.	35.5
29.	25038	Smt. Vandana Kumar	Genl.	35.0
30.	25032	Ku. Jeena Grewal	Genl.	35.0
31.	25039	Smt. Annei Binny	Genl.	34.5
32.	25034	Smt. Banita Swain	Genl.	34.5
33.	25037	Smt. Mercy Kumar	Genl.	34.5
34.	25035	Smt. Weena Dewangan	Genl.	34.0
35.	25040	Smt. Tigi Samuel	Genl.	34.0
36.	25048	Smt. G. Hemavati	Genl.	33.0
37.	25046	Smt. Veena Rajput	Genl.	31.0
38.	25052	Ku. Tripti	Genl.	29.0
39.	25049	Smt. Shiji Shinode	Genl.	28.0
40.	25058	Ku. Chandramani	Genl.	27.0
41.	25059	Miss Ashulata	Genl.	26.0
42.	25031	Ku. Gayatri Gupta	Genl.	23.0
43.	25042	Smt. P. A. Dolly	Genl.	22.0
44.	25053	Smt. Jaymol R. Mathew	Genl.	21.5
45.	25056	Smt. Shobhi Sanjiv	Genl.	21.5
46.	25047	Ku. Seema Das	Genl.	21.0

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47.	25051	Miss Shailaja Pillai	Genl.	20.0
48.	25050	Smt. Sunita Sahu	Genl.	20.0
49.	25054	Smt. Leena Shaji	Genl.	19.0
50.	25057	Smt. Anu S. Thomas	Genl.	19.0
51.	25055	Smt. Sushila Singh	Genl.	18.0
52.	25065	Smt. Chandrakala	Genl.	18.0
53.	25064	Smt. Sita Parganiha	Genl.	17.0
54.	25060	Ku. Niru Kumari	Genl.	17.0
55.	25061	Ku. Jyoti Thakur	Genl.	16.0
56.	25063	Smt. Preetha Sunil	Genl.	0.0 absent
57.	25008	Ku. Sanju Sahu	O.B.C.	36.0
58.	25002	Purnima Gedam	S.C.	43.5
59.	25004	Krishna Kumari	S.C.	36.5
60.	25005	Smt.DineshwariNagwanshi	S.C.	36.5
61.	25001	Smt. Kamleshwari Joshi	S.C.	35.5
62.	25006	Smt. Uma Shendey	S.C.	18.0
63.	25003	Sandhya Godamker	S.C.	15.0
64.	25007	Smt. Shubhra Beny	S.T.	16.0

9. The petitioner was called for interview as per letter dated 7.10.2002 (Annexure R/1) not as per the letter dated 6.5.2002 (Annexure P/2). Learned counsel prays for dismissal of the petition.

10. Having heard learned counsel for the parties and having perused the documents appended to the pleadings as well as the original documents produced by the Respondents No. 1 to 3, it is evident that the interview had taken place on 27.2.2002, pursuant to the letter dated 7.10.2002, addressed to the Divisional Employment Exchange, and on the basis of names sent by the office of the employment exchange. The said letter clearly provided that 45 posts of nursing sisters are available for appointment and out of which 5 posts will be reserved for diploma holders having 3 years experience and 40 posts will be open for the candidates having B.Sc. nursing degree with a minimum two years experience. Out of 40 posts, 9 posts were

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reserved for S.T., 5 for S.C., 5 for O.B.C., 5 for Ex-Servicemen and 16 seats were available for general candidates. Out of 5 seats reserved for diploma holders, one seat for S.C. and 4 seats were available for general candidates. The petitioner was sent call letter on 16.12.2002 (Annexure P/6) for appearing for interview on 27.12.2002. The petitioner had executed a bond for the period of four years w.e.f. 1.8.1996 as per Part- II of the order dated 11 September, 1996 (Annexure P/4). The petitioner had worked for four years w.e.f. 1.8.1996 and she was relieved from bond service of Bhilai Steel Plant w.e.f. 31.7.2000 by order dated 9.8.2000 (Annexure P/5). Hence, the contention of the petitioner that bond executed was for regularizing the job is not sustainable, in view of clause VII 4. and 5. of the Prospectus for B.Sc. (Nursing) 1992-93 also.

11. There is no discrimination and the policy is reasonable to provide an opportunity of appointment to the diploma holders also who have more experience than the candidates having B.Sc. (nursing). The letter dated 7.10.2002 cannot be faulted with, as the petitioner participated in the selection process and obtained less than minimum qualifying marks i.e. 25 out of 50 as such she could not be appointed on the post of nursing sister.

12. Learned counsel for the respondents No. 1 to 3 has cited a decision of the Supreme Court in **Vijay Syal and another Vs. State of Punjab and others** (AIR 2003 S.C. 4023) in support of his contention. The Supreme Court in para 12 held as under:-

> "12.....Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria....."

13. In **Sardara Singh and others Vs. State of Punjab and others AIR 1991 S.C. 2248** the Supreme Court in para 4 held as under:-

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"4.....Though we find that the procedure adopted by the Collector, in inviting applications is not commendable, but the grievance would be voiced only by the persons who did not have the opportunity to make applications within the prescribed period. But no such grievance could be raised by persons like the appellants. Under those circumstances, the procedure adopted, though irregular, does not vitiate the selection of candidates, ultimately made by the Committee."

14. In **Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others** (2002) 6 S.C.C. 127 the Supreme Court in para 32 held as under:-

32.....It is remedy which stands barred and it is in this perspective in Om Prakash Shukla v. Akhilesh Kumar Shukla[20] a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

15. The Supreme Court in **Dalpat Abasaheb Solunke etc. V. Dr. B. S. Mahajan etc.** AIR 1990 S.C. 434 in para -9 held as under:-

"9. .....It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by

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the Court, the High Court went wrong and exceeded its Jurisdiction."

16. Applying settled legal position of law to the facts of the case, it is established that the action of the Respondents No. 1 to 3 was not arbitrary or discriminatory and the selection of the other candidates in preference of the petitioner was in consonance with law.

17. For the reasons stated above this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur